



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2019-0212; FRL-10997-01-R6]

Air Plan Disapproval; Louisiana; Excess Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA, the Act), the Environmental Protection Agency (EPA) is proposing to disapprove a revision to the Louisiana State Implementation Plan (SIP) submitted by the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), on November 22, 2016, and supplemented on June 9, 2017. The submittals are in response to the EPA's national SIP call of June 12, 2015, concerning excess emissions during periods of Startup, Shutdown and Malfunction (SSM). EPA is proposing to determine that the revision to the SIP in the submittals does not correct the deficiency with the Louisiana SIP identified in the June 12, 2015 SIP call. We are taking this action in accordance with section 110 of the Act.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2019-0212 at <https://www.regulations.gov> or via email to Shar.alan@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact Mr. Alan Shar, (214) 665-6691, Shar.alan@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Regional Haze and SO₂ Section, EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270, (214) 665-6691, Shar.Alan@epa.gov. We encourage the public to submit comments via <https://www.regulations.gov>, as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

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I. Background

A. EPA's 2015 SSM SIP Action

On February 22, 2013, the EPA issued a Federal Register proposed rulemaking action outlining EPA's policy at the time with respect to SIP provisions related to periods of SSM. The EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the CAA with regard to excess emission events.¹ For each SIP provision that EPA determined to be inconsistent with the CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5). On September 17, 2014, EPA issued a document supplementing and revising what the Agency had previously proposed on February 22, 2013, in light of a D.C. Circuit decision that determined the CAA precludes authority of the EPA to create affirmative defense provisions applicable to private civil suits. EPA outlined its updated policy that affirmative defense SIP provisions are not consistent with CAA requirements. The EPA proposed in the supplemental proposal document to apply its revised interpretation of the CAA to specific affirmative defense SIP provisions and proposed SIP calls for those provisions where appropriate (79 FR 55920, September 17, 2014).

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and

¹ State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction (78 FR 12460) Feb. 22, 2013.

Malfunction,” (80 FR 33839) June 12, 2015, hereafter referred to as the “2015 SSM SIP Action.” The 2015 SSM SIP Action clarified, restated, and updated EPA’s interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states, including Louisiana, were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

EPA issued a Memorandum in October 2020 (2020 Memorandum), which stated that certain provisions governing SSM periods in SIPs could be viewed as consistent with CAA requirements.² Importantly, the 2020 Memorandum stated that it “did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act.” Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued to Louisiana in 2015. The 2020 Memorandum did, however, indicate EPA’s intent at the time to review SIP calls that were issued in the 2015 SSM SIP Action to determine whether EPA should maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, EPA’s Deputy Administrator withdrew the 2020 Memorandum and announced EPA’s return to the policy articulated in the 2015 SSM SIP Action (2021 Memorandum).³ As articulated in the 2021 Memorandum, SIP provisions that contain exemptions or affirmative defense provisions are not consistent with CAA requirements and, therefore, generally are not approvable if contained in a SIP submission. This policy approach

² October 9, 2020, Memorandum “Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,” from Andrew R. Wheeler, Administrator.

³ September 30, 2021, Memorandum “Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,” from Janet McCabe, Deputy Administrator.

is intended to ensure that all communities and populations, including overburdened communities, receive the full health and environmental protections provided by the CAA.⁴ The 2021 Memorandum also retracted the prior statement from the 2020 Memorandum of EPA's plans to review and potentially modify or withdraw particular SIP calls. That statement no longer reflects EPA's intent.

EPA intends to implement the principles laid out in the 2015 SSM SIP Action as the agency takes action on SIP submissions, including the November 22, 2016, and June 9, 2017 Louisiana SIP submittals, provided in response to the 2015 SSM SIP Action.

B. Louisiana's Provision Related to Excess Emissions

Louisiana Administrative Code (LAC), Title 33 Environmental Quality, Part III, Air (LAC 33:III), Chapter 22 Control of Emissions of Nitrogen Oxides (NO_x) is applicable only to the Baton Rouge ozone nonattainment area and its Region of Influence (ROI).⁵ LAC 33:III.2201.C(8) provides that point sources at an affected facility "are exempted" from the NO_x emission limitations "during start-up and shutdown . . . or during a malfunction." LAC 33:III.2201.C(8) was originally approved by the EPA into the Louisiana SIP on September 27, 2002 (67 FR 60877) and became federally effective on October 27, 2002. As a part of the EPA's 2015 SSM SIP Action, the EPA made a finding that LAC 33:III.2201.C(8) of the Louisiana SIP is substantially inadequate to meet CAA requirements and issued a SIP call with respect to this provision because it provided for an automatic exemption.⁶

II. Analysis of SIP Submission

In response to the June 12, 2015 SSM SIP Action, LDEQ repealed section LAC 33:III.2201.C(8) under the State law and added a new section, LAC 33:III.2201.K. Startup and

⁴ Section J, June 12, 2015 (80 FR 33985).

⁵ In 2012, EPA designated nonattainment areas for the 2008 ozone NAAQS (77 FR 30088, May 21, 2012), including the Baton Rouge area consisting of five parishes: Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge. LAC 33:III.2201.A(1) defines Region of Influence as an area to the north of the Baton Rouge nonattainment area that encompasses affected facilities in the attainment parishes of East Feliciana, Pointe Coupee, St. Helena, and West Feliciana.

⁶ See "Affected States in EPA Region VI", section IX.G.4, June 12, 2015 (80 FR 33968).

Shutdown, in its place.⁷ The November 22, 2016, SIP submittal as supplemented by the June 9, 2017 SIP submittal requested the removal of the SIP-called provision LAC 33:III.2201.C(8) and approval of LAC 33:III.2201.K into the SIP in its place.⁸ As detailed in the Louisiana's June 9, 2017 SIP submittal, LAC 33:III.2201.K would require affected NOx sources to comply with either: (1) the applicable emission limitations and standards at all times, including periods of startup and shutdown; or (2) the applicable emission limitations and standards at all times, except during periods of startup and shutdown covered by work practice standards permissible under the rule. Thus, owners and operators of sources that would choose not to comply with the numeric emission limitations during periods of startup and shutdown would be allowed to comply with alternative work practice standards. The owner or operator would not have to

⁷ LAC 33:III.2201.K Startup and Shutdown

"1. For affected point sources that are shut down intentionally more than once per month, the owner or operator shall include NOx emitted during periods of start-up and shutdown for purposes of determining compliance with the emission factors set forth in Subsection D of this Section, or with an alternative plan approved in accordance with Paragraph E.1 or 2 of this Section.

2. For all other affected point sources, effective May 1, 2017, the owner or operator shall either comply with Paragraph K.1 of this Section or the work practice standards described in Paragraph K.3 of this Section during periods of start-up and shutdown. If the owner or operator chooses to comply with work practices standards, the emission factors set forth in Subsection D of this Section shall not apply during periods of start-up and shutdown.

3. Work Practice Standards

a. The owner or operator shall operate and maintain each affected point source, including any associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.

b. Coal-fired and fuel oil-fired electric power generating system boilers and fuel oil-fired stationary gas turbines shall use natural gas during start-up. Start-up ends when any of the steam from the boiler or steam turbine is used to generate electricity for sale over the grid or for any other purpose (including on-site use). If another fuel must be used to support the shutdown process, natural gas shall be utilized.

c. Engage control devices such as selective catalytic reduction (SCR) or selective non-catalytic reduction (SNCR) as expeditiously as possible, considering safety and manufacturer recommendations. The department shall incorporate into the applicable permit for each affected facility appropriate requirements describing the source-specific conditions or parameters identifying when operation of the control device shall commence.

d. Minimize the start-up time of stationary internal combustion engines to a period needed for the appropriate and safe loading of the engine, not to exceed 30 minutes.

e. Maintain records of the calendar date, time, and duration of each start-up and shutdown.

f. Maintain records of the type(s) and amount(s) of fuels used during each start-up and shutdown.

g. The records required by Subparagraphs K.3.e and f of this Section shall be kept for a period of at least five years and shall be made available upon request by authorized representatives of the department.

4. On or before May 1, 2017, the owner or operator shall notify the Office of Environmental Services whether each affected point source will comply with Paragraph K.1 or K.3 of this Section during periods of start-up and shutdown.

a. The owner or operator does not have to select the same option for every affected point source.

b. The department shall incorporate into the applicable permit for each affected facility the provisions of Paragraph K.1 and/or K.3 of this Section, as appropriate. The owner or operator may elect to revise the method of compliance with Subsection K of this Section for one or more affected point sources by means of a permit modification."

⁸ The June 9, 2017 submittal states that it supplements LDEQ's November 22, 2016 submittal, as it relates to the proposed revisions which are the subject of this proposed rulemaking.

select the same method of compliance for every affected point source and would be allowed to revise its selection of the method of compliance for one or more affected point sources by means of a permit modification. Any noncompliance with the emission limitations or with the alternative plan would be submitted in writing within 90 days of the end of each ozone season (May 1 - September 30, inclusive) to the administrative authority.

*A. EPA Recommendations for Development of Alternative Emission Limitations
Applicable During Startup and Shutdown*

EPA appreciates the State's efforts in removing the NO_x exemption provision and replacing the exemption provision with an Alternative Emission Limitations (AELs) approach. The EPA interprets the CAA to allow SIPs to include AELs for modes of operation during which an otherwise applicable emission limitation cannot be met, such as may be the case during startup or shutdown. The AEL, whether a numerical limitation, technological control requirement or work practice requirement, would apply during a specific mode of operation as a component of the continuously applicable emission limitation. All components of the resulting emission limitation must meet the substantive requirements applicable to the type of SIP provision at issue, must meet the applicable level of stringency for that type of emission limitation and must be legally and practically enforceable.⁹

For the AELs to be approvable (i.e., meet CAA requirements), alternative requirements applicable to the source during startup and shutdown should be narrowly tailored and take into account considerations such as the technological limitations of the specific source category and the control technology that is feasible during startup and shutdown.¹⁰ As articulated in the 2015 SSM SIP Action, the EPA recommends giving consideration to the following seven specific criteria for developing AELs in SIP provisions that apply during startup and shutdown:¹¹ (1) The revision is limited to specific, narrowly defined source categories using

⁹ June 12, 2015 (80 FR 33913).

¹⁰ Id.

¹¹ June 12, 2015 (80 FR 33980).

specific control strategies; (2) Use of the control strategy for this source category is technically infeasible during startup or shutdown periods; (3) The AEL requires that the frequency and duration of operation in startup or shutdown mode are minimized to the greatest extent practicable; (4) As part of its justification of the SIP revision, the state analyzes the potential worst-case emissions that could occur during startup and shutdown based on the applicable AEL; (5) The AEL requires that all possible steps are taken to minimize the impact of emissions during startup and shutdown on ambient air quality; (6) The AEL requires that, at all times, the facility is operated in a manner consistent with good practice for minimizing emissions and the source uses best efforts regarding planning, design, and operating procedures; and (7) The AEL requires that the owner or operator's actions during startup and shutdown periods are documented by properly signed, contemporaneous operating logs or other relevant evidence. The EPA will use these criteria when evaluating whether a particular AEL meets CAA requirements for SIP provisions. Any SIP revision establishing an AEL that applies during startup and shutdown would be subject to the same procedural and substantive review requirements as any other SIP submission.

We also note that AELs applicable during startup and shutdown cannot allow an inappropriately high level of emissions or an effectively unlimited or uncontrolled level of emissions, as those would constitute impermissible de facto exemptions for emissions during certain modes of operation.¹²

The proposed revision to Chapter 22 of the Louisiana SIP has been reviewed to determine whether it addresses and resolves the deficiency with the Louisiana SIP as identified in the EPA's June 12, 2015 SSM SIP Action and whether the proposed revision meets all CAA requirements for SIPs.

B. Evaluation

¹² June 12, 2015 (80 FR 33980).

After reviewing the information in Louisiana’s SIP revision submittals¹³, the following deficiencies have been identified:

a) The proposed LAC 33:III.2201.K(3)(a) would apply to *all* affected point sources of NO_x (electric power generating system boilers, industrial boilers, process heaters/furnaces, stationary gas turbines, and stationary internal combustion engines) in the Baton Rouge ozone nonattainment area and its ROI. Although the Baton Rouge area was redesignated in 2017 from nonattainment to attainment with respect to the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS),¹⁴ the Chapter 22 provisions in the Louisiana SIP are necessary and applicable to affected sources in the Parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge and its ROI.¹⁵ The proposed LAC 33:III.2201.K(3)(a) is considered a “general duty” provision. We support the inclusion of general duty provisions as separate additional requirements in SIPs, for example, to ensure that owners and operators act consistent with reasonable standards of care; however, a general duty-type provision does not ensure the AELs meet the applicable stringency requirements for SIPs (e.g., Reasonably Available Control Technology (RACT)).¹⁶ As discussed in section II.A of this document, criterion 1 of the 7 specific criteria for developing AELs, the EPA recommends that AELs be limited to specific and narrowly defined source categories using specific control strategies.¹⁷ The categories of sources (electric power generating system boilers, industrial boilers, process heaters/furnaces, stationary gas turbines, and stationary internal combustion engines) to which LAC 33:III.2201.K(3)(a) would apply are broad and the administrative record accompanying Louisiana’s SIP submittals does not contain sufficient information demonstrating that the proposed AELs meet the CAA

¹³ Louisiana’s SIP submittals include copies of EPA’s August 3, 2016, and December 16, 2016, comment letters on LDEQ’s proposed rulemaking associated with the development of revisions to LAC 33:III.2201, as well as LDEQ’s responses to the comments raised in those letters.

¹⁴ December 27, 2016 (81 FR 95051) Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Louisiana; Redesignation of Baton Rouge 2008 8-Hour Ozone Nonattainment Area to Attainment, Effective March 21, 2017.

¹⁵ See <https://www3.epa.gov/airquality/greenbook/hmcty.html> (URL dated 10 April 2023).

¹⁶ See comment 4, EPA’s December 16, 2016 comment letter to Deidra Johnson of LDEQ.

¹⁷ See comment 3, EPA’s December 16, 2016 comment letter to Deidra Johnson of LDEQ.

applicable stringency requirements for all covered sources.¹⁸ For example, the general duty that an owner or operator shall operate a source consistent with “safety and good air pollution control practices for minimizing emissions” is not sufficient to identify what these practices might be across the wide range of source categories to which this standard applies, nor is it clear how such a general duty would be practically enforceable and serve as a limitation on emissions that satisfies, for example, the RACT requirement during startup or shutdown.

b) The proposed LAC 33:III.2201.K fails to require a source take all possible steps to minimize the impact of emissions during startup and shutdown on ambient air quality, as recommended in criterion 5 of 7, discussed in section II.A of this document, for developing AELs in SIPs. As EPA has previously stated, SIPs are ambient-based standards and any emissions above the allowable limit may cause or contribute to violations of the NAAQS.¹⁹ We note that including a statement to the effect requiring the owner or operator to take all possible steps so that NAAQS or Prevention of Significant Deterioration (PSD) increments are not exceeded as a result of emission events from these sources could cure this deficiency.

c) The proposed LAC 33:III.2201.K(4)(b) states that “[t]he owner or operator may elect to revise the method of compliance ... of this section for one or more affected point sources by means of a *permit* modification.” EPA has stated that a “SIP needs to reflect the control obligations of sources, and any revision or modification of those obligations should not be occurring through a separate process, such as a permit process, which would not ensure that “alternative” compliance options do not weaken the SIP.” See June 12, 2015 (80 FR 33915). Additionally, “any revisions

¹⁸ While LAC 33:III.2201.K(3)(b) imposes fuel type and a timing requirement during startup of coal-fired and fuel oil-fired electric power generating system boilers and fuel oil-fired stationary gas turbines, LAC 33:III.2201.K(3)(c) requires timely engagement of control devices such as SCR or SNCR, and LAC 33:III.2201.K(3)(d) limits the startup time of stationary internal combustion engines, we note that for certain affected point sources not equipped with a control device (i.e., industrial boilers, process heaters/furnaces, and stationary gas turbines), the only requirement that applies would be the general duty provision in LAC 33:III.2201.K(3)(a) and the recordkeeping requirements of LAC 33:III.2201.K(3)(e), (f) and (g). Although LDEQ in its response to EPA comment #3 states that EPA has categorized MACT recordkeeping requirements as work practice standards, the MACT standards referenced by LDEQ also include specific emission limitations.

¹⁹ EPA’s 1982 Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions, September 28, 1982 Kathleen M. Bennett Memorandum.

to obligations in the SIP need to occur through the SIP revision process....”²⁰ Mere reliance upon a permit-based approach when setting forth an AEL without going through a source-specific SIP revision (public notice and comment) process circumvents EPA’s role in reviewing and approving SIP emission limitations to ensure that AELs are “enforceable” or “permissible,” as required by CAA section 110(a)(2)(A) or 110(a)(2)(C). Moreover, emission limits contained in an air permit that is not approved in the SIP and could be later modified (e.g., LAC 33:III.2201.K(4)(b)) - without requiring EPA approval as a substitute measure - is not considered permanent.²¹ The EPA notes that SIP-enforceable methods of compliance with emission limitations that are specified only in a permit are not part of the SIP unless and until they are submitted to EPA and federally approved into the SIP. The fact that EPA has approved the permitting program itself into the SIP does not mean that EPA has approved the actual contents of each permit issued or has made such contents an approved part of the SIP.²² In the context of emission limitations contained in a SIP, EPA views the approach of establishing AELs through a permit program that does not involve submitting the relevant permit requirements to the EPA for inclusion in the SIP as a form of “director’s discretion,” a type of provision that, as explained in the 2015 SSM SIP Action, is inconsistent with CAA requirements because it would allow the state permitting authority to create alternatives to SIP emission limitations without complying with the CAA’s SIP revision requirements.²³ In response to a potential argument that EPA and the public would have an opportunity to comment on the permit, we note that this opportunity for public comment is not a substitute for a source-specific SIP revision, which is needed to alter otherwise applicable SIP emission limitations.²⁴ A fully approvable SIP emission limitation,

²⁰ June 12, 2015 (80 FR 33916).

²¹ Disapproval of Missouri Air Plan; Control of Sulfur Dioxide Emissions, EPA Docket ID No. EPA–R07–OAR–2022–0531 available at www.regulations.gov, July 8, 2022 (87 FR 40760).

²² June 12, 2015 (80 FR 33915-33916, and 33922).

²³ November 28, 2022 (87 FR 72944); see also 80 FR 33922 (The EPA is not authorized to approve a program that in essence allows a SIP revision without compliance with the applicable statutory requirements in sections 110(k)(3), 110(l) and 193 and any other provision that is germane to the particular SIP emission limitation at issue).

²⁴ November 28, 2022 (87 FR 72944).

including periods of startup and shutdown, must meet all substantive requirements of the CAA applicable to such a SIP provision. The proposed AELs in LAC 33:III.2201.K applicable during startup and shutdown periods should be clear so as not to conflict or undermine statutory obligations that SIP emission limitations meet all stringency requirements.²⁵ The language in LAC 33:III.2201.K is not sufficiently specific to ensure that the proposed AELs do not undermine other more stringent SIP emission limitation requirements applicable to some affected sources subject to LAC 33:III.2201.

d) Similarly, the proposed LAC 33:III.2201.K(3)(c) reads, “[t]he department shall incorporate into the applicable *permit* for each affected facility appropriate requirements describing the source-specific conditions or parameters identifying when operation of the control device shall commence (emphasis added).” In its 2016 comment letter, EPA stated that “it would be necessary to submit such applicable permits to the EPA as source-specific SIP revisions to ensure attainment/maintenance of NAAQS, preservation of PSD increments, and SIP enforcement.”²⁶ The proposed revisions set forth in the November 22, 2016, and June 9, 2017 submittals do not provide for a mechanism to submit such applicable permits to the EPA for review and approval into the Louisiana SIP as source-specific SIP revisions. As previously noted above, the state’s air permitting process, on its own, cannot be used to create alternatives to or impose conditions for SIP emission limitations for sources during startup and shutdown in lieu of a SIP revision. The state may use the permit development process as a means to evaluate and establish AELs for periods of startup and shutdown for a specific source, but such permit conditions would not negate or replace applicable SIP limits without being approved as a source-specific SIP revision.²⁷

e) The EPA recommendation in criterion 2 of 7 in section II.A for the establishment of

²⁵ June 12, 2015 (80 FR 33893).

²⁶ See comment 6, EPA’s December 16, 2016 comment letter to Deidra Johnson of LDEQ.

²⁷ Disapproval of Georgia Rules for Air Quality Control Pertaining to Startup, Shutdown and Malfunction, EPA Docket ID No. EPA–R4–OAR–2022–0294 available at www.regulations.gov, November 28, 2022 (87 FR 72944).

AELs requires justification that use of the control strategy for the affected source category is technically infeasible during startup or shutdown periods. EPA does not recommend establishing AELs for sources that are capable of meeting their existing emission limitations at all times. It is unclear how the proposed revision in LAC 33:III.2201.K takes this technical infeasibility justification fully into account within the SIP process prior to its implementation by the owner or operator. Louisiana does explain that it is well understood that sources utilizing SNCR and SCR for control must reach the necessary temperature before being able to operate properly. But the Louisiana rules also anticipate some sources may desire to comply with the rule limits at all times including startup and shutdown. Many sources likely utilize control techniques that can operate through a wide range of conditions including startup and shutdown. Because Louisiana did not submit information on the particular sources utilizing AELs, EPA cannot evaluate whether all of these sources are meeting any underlying requirement during startup and shutdown. For example, where an existing limitation represents RACT and the state is submitting an AEL that allows emissions in excess of that limit during startup, the SIP submission should explain why the RACT limit cannot be met during startup, as part of the justification for a higher RACT limit during startup. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.²⁸ Furthermore, as provided in LAC 33:III.2201.K(2) affected point sources capable of meeting the original emission limitations and standards (set forth in LAC 33:III.2201.D) at all times, even during periods of startup and shutdown, have the option of complying with AELs such as work practice standards (LAC 33:III.2201.K(3)) in lieu of meeting those original limitations. Accordingly, EPA views this option as inconsistent with EPA's 2015 SSM SIP Action.

²⁸ "NOx Supplement" FR titled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," November 25, 1992 (57 FR 55620). Also, see September 17, 1979 (44 FR 53762).

f) The EPA recommendation in criterion 4 of 7 in section II.A for the establishment of AELs states that the air agency, as a part of its justification of the SIP revision, should analyze the potential worst-case emissions that could occur during startup and shutdown based on the applicable AEL. The June 9, 2017 SIP submittal references Louisiana's November 22, 2016 SIP submittal wherein LDEQ remarks, "[P]resuming the newly-established work practice standards have no demonstrable impact on NO_x emissions (an unnecessarily conservative assumption), LDEQ's historical emissions data represents the potential "worst-case" scenario that could be attributed to the alternative emission limitation." The submission goes on to explain that despite the exemption, air quality in the Baton Rouge area has improved. It is unclear, however, why LDEQ assumes that the worst-case emissions under the AELs could never be higher than the historical actual emissions. We also note that AELs applicable during startup and shutdown cannot allow an inappropriately high level of emissions or an effectively unlimited or uncontrolled level of emissions, as those would constitute impermissible de facto exemptions for all affected NO_x point sources emissions during startup and shutdown.

Establishing AELs absent of analyzing worst-case scenarios that could occur during startup and shutdown, similar to exemptions, shields emissions, leads to aggravated air quality and precludes enforcement. As submitted, it is unclear how LAC 33:III.2201.K takes this factor into consideration. Should there be an assertion that the potential worst-case emissions analysis will be taken into account during development of applicable specific permit conditions for each affected facility, we note that LAC 33:III.2201.K does not provide for submittal of applicable permits or their relevant sections into the SIP and, as previously discussed, a permitting process on its own cannot be used to create alternatives to SIP emission limitations for sources during startup and shutdown in lieu of a SIP revision. With respect to proposed LAC 33:III.2201.K(4)(b), we also note that even if Louisiana intended to submit these AELs as SIP revisions, the potential resource burden on LDEQ and EPA - in evaluating each single source AEL for both consideration of the criteria for an AEL and compliance with SIP requirements -

could be significant.²⁹

g) Finally, Louisiana's proposed revision to add LAC 33:III.2201.K to the SIP creates a non-SIP mechanism for amending the SIP by creating alternatives to it. It also creates the potential for confusion because all the requirements of the associated AEL would not be contained in the SIP together with the SIP limits it amends, thereby allowing for the possibility of non-SIP AELs provisions that conflict with the SIP limits. Moreover, it does so without opportunity for EPA review or disapproval where the AEL fails to meet CAA requirements. Any AEL which revises a limit that is EPA-approved as part of the Louisiana SIP must be submitted as a SIP revision in accordance with CAA section 110. EPA's 2015 SSM SIP Action states that AELs which modify SIP-approved emissions limitations, whether adopted on a case-by-case basis or as an AEL generally applicable to a narrow category of similar sources, must be presented to EPA for approval as a SIP revision and go through the SIP revision process. The AELs at issue here would be changes to a state emissions regulation adopted as part of the Louisiana SIP to implement the CAA, and as such must be approved by EPA as a SIP revision. States cannot unilaterally make changes to SIP-approved emission limits and compliance obligations, merely through a permit modification, without the requirements of CAA section 110 being met, including a public comment process and EPA approval. The fact that an AEL must be incorporated into a permit that is part of the EPA-approved Louisiana SIP does not do away with this requirement that the AEL be submitted as a SIP revision and go through the SIP revision process.

In conclusion, we are proposing to make a determination that Louisiana's November 22, 2016 and June 9, 2017 SIP revision submittals that would repeal LAC 33:III.2201.C(8) and replace it with LAC 33:III.2201.K titled Startup and Shutdown, do not correct the deficiency and substantial inadequacy with LAC 33:III.2201.C(8), as identified in the June 12, 2015 SSM SIP Action.

²⁹ See December 22, 2022 (87 FR 78619).

III. Proposed Action

The EPA is proposing to disapprove a revision to the Louisiana SIP submitted by LDEQ on November 22, 2016, as supplemented on June 9, 2017, in response to EPA's 2015 SSM SIP Action concerning excess emissions during periods of SSM. In accordance with section 110 of the Act, we are proposing to disapprove the revision to Louisiana SIP that would repeal LAC 33:III.2201.C(8) and add a new section LAC 33:III.2201.K Startup and Shutdown in its place.³⁰ The EPA's review indicates that this SIP revision would not correct the substantial inadequacy identified in the June 12, 2015 SIP call related to section LAC 33:III.2201.C(8). EPA is not reopening the 2015 SSM SIP Action and is only taking comment on whether the proposed SIP revision is consistent with CAA requirements and whether it addresses the substantial inadequacy identified in the 2015 SSM SIP Action for the Louisiana SIP section LAC 33:III.2201.C(8).

If the Agency finalizes this disapproval, CAA section 110(c)(1) would require EPA to promulgate a Federal Implementation Plan (FIP) within 24 months of the effective date of the final disapproval action, unless EPA first approves a complete SIP revision that corrects the deficiency with LAC 33:III.2201.C(8) as identified in the 2015 SSM SIP Action or the deficiencies identified in Section II.B of this document within such time. In addition, final disapproval would trigger mandatory sanctions under CAA section 179 and 40 CFR 52.31 unless the State submits, and EPA approves, a complete SIP revision that corrects the identified deficiencies within 18 months of the effective date of the final disapproval action.³¹

³⁰ The removal of the exemption in LAC 33:III.2201.C(8) and the addition of LAC 33:III.2201.K is considered an inseparable action. The proposed disapproval of the addition of LAC 33:III.2201.K to the SIP would make an approval of the removal of LAC 33:III.2201.C(8) from the SIP more stringent than Louisiana anticipated or intended. See *Bethlehem Steel Corp. v. Gorsuch*, 742 F.2d 1028, 1036–37 (7th Cir. 1984).

³¹ The offset sanction in CAA section 179(b)(2) would be triggered 18 months after the effective date of a final disapproval, and the highway funding sanction in CAA section 179(b)(1) would be triggered 24 months after the effective date of a final disapproval. Although the sanctions clock would begin to run from the effective date of a final disapproval, mandatory sanctions under CAA section 179 generally apply only in designated nonattainment areas. This includes areas designated as nonattainment after the effective date of a final disapproval. As discussed in the 2015 SSM SIP Action, EPA will evaluate the geographic scope of potential sanctions at the time it makes a determination that the air agency has failed to make a complete SIP submission in response to the 2015 SIP call, or at the time it disapproves such a SIP submission. The appropriate geographic scope for sanctions may vary

IV. Environmental Justice Considerations

For informational and transparency purposes only, the EPA is providing additional analysis of environmental justice associated with this proposed action for the purpose of providing information to the public.

EPA first reviewed demographic data, which provides an assessment of individual demographic groups, of the populations living within Louisiana.³² The EPA then compared the data to the national average for each of the demographic groups. The results of the demographic analysis indicate that, for populations within Louisiana, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is similar to the national average (57.9 percent of Louisiana's population compared to 59.3 percent nationally). The percent of persons who reported their race as Black or African American alone is significantly higher than the national average (33.0 percent versus 13.6 percent). The percentage of Louisiana's population living in poverty is 19.6 percent, which is higher than the national average of 11.6 percent. The percent of people over 25 with a high school diploma in Louisiana is similar to the national average (86.2 percent versus 88.9 percent), while the percent with a Bachelor's degree or higher is lower than the national average (25.5 percent versus 33.7 percent).

EPA conducted screening analyses using EJSCREEN, an environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators.³³ The EJSCREEN tool presents these indicators at a Census Block Group (CBG) level or a larger users specified area that

depending upon the SIP provisions at issue. See June 12, 2015 (80 FR 33930) EPA Docket ID No. EPA-HQ-OAR-2012-0322 available at www.regulations.gov; November 28, 2022 (87 FR 72946) Disapproval of Air Quality Implementation Plans; Georgia - Revisions to Rules for Air Quality Control Pertaining to Startup, Shutdown and Malfunction EPA Docket ID No. EPA-R4-OAR-2022-0294 available at www.regulations.gov; and April 6, 2023 (88 FR 20447-20448) Air Plan Partial Disapproval and Partial Approval; Tennessee - Revisions to Startup, Shutdown, and Malfunction Rules EPA Docket ID No. EPA-R4-OAR-2022-0783 available at www.regulations.gov.

³² See the United States Census Bureau's QuickFacts on Louisiana at <https://www.census.gov/quickfacts/fact/table/LA,US/PST045222>.

³³ See The EJSCREEN tool available at <https://www.epa.gov/ejscreen>.

covers multiple CBGs.³⁴ EJSCREEN is not a tool for performing in depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to environmental justice and is subject to uncertainty in some underlying data (e.g., some environmental indicators are based on monitoring data which are not uniformly available; others are based on self-reported data).³⁵ EJSCREEN environmental indicators help screen for locations where residents may experience a higher overall pollution burden than would be expected for a block group with the same total population in the U.S. EJSCREEN also provides information on demographic indicators, including percent low-income, communities of color, level of income, unemployment rate, linguistic isolation, less than high school education, population below age 5, population over age 64, and low life expectancy compared to the U.S. as a whole.³⁶ The EPA prepared EJSCREEN reports, including demographic indicators, covering each of these 9 affected parishes (Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, and West Feliciana). See Tables 1 and 2 for a summary of demographic indicator results from the EPA’s screening-level analysis for these 9 affected parishes. The detailed EJSCREEN reports are provided in the docket for this rulemaking.

Table 1 - Demographic Indicators for Louisiana Parishes Ascension, East Baton Rouge, East Feliciana, Iberville, and Livingston

Demographic Indicators	Ascension	East Baton Rouge	East Feliciana	Iberville	Livingston	US
	Value (%ile)	Value (%ile)	Value (%ile)	Value (%ile)	Value (%ile)	Value (-)
People of Color	32% (52 nd %ile).	56% (70 th %ile).	46% (59 th %ile).	52% (68 th %ile).	13% (29 th %ile).	40% (-)

³⁴ See <https://www.census.gov/programssurveys/geography/about/glossary.html>.

³⁵ In addition, EJSCREEN relies on the five-year block group estimates from the U.S. Census American Community Survey. The advantage of using five-year over single-year estimates is increased statistical reliability of the data (i.e., lower sampling error), particularly for small geographic areas and population groups. For more information, see https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf.

³⁶ For additional information on environmental indicators in EJSCREEN, see “EJSCREEN Environmental Justice Mapping and Screening Tool: EJSCREEN Technical Documentation,” Chapters 2, 3, and Appendix C (September 2019) at https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen_technical_document.pdf.

Demographic Indicators	Ascension	East Baton Rouge	East Feliciana	Iberville	Livingston	US
Low Income	21% (39 th %ile).	35% (61 st %ile).	31% (40 th %ile).	38% (66 th %ile).	27% (48 th %ile).	30% (-)
Unemployment Rate	6% (65 th %ile).	7% (68 th %ile).	7% (63 rd %ile).	10% (81 st %ile).	5% (60 th %ile).	5% (-)
Limited English Speaking	1% (60 th %ile).	2% (63 rd %ile)	0% (75 th %ile).	1% (57 th %ile).	1% (58 th %ile).	5% (-)
Population with Less Than High School Education	10% (58 th %ile).	10% (55 th %ile).	21% (71 st %ile).	20% (80 th %ile).	13% (65 th %ile).	12% (-)
Population below Age 5	7% (68 th %ile).	7% (64 th %ile).	5% (48 th %ile).	5% (54 th %ile).	7% (66 th %ile).	6% (-)
Population over Age 64	12% (35 th %ile).	14% (45 th %ile).	18% (65 th %ile).	16% (51 st %ile).	13% (41 st %ile).	16% (-)
Low Life Expectancy	17% (31 st %ile).	19%(50 th %ile).	22% (53 rd %ile).	23% (83 rd %ile).	20% (52 nd %ile).	20% (-)

Percentiles (%ile) are within the US, where indicated.

Table 2 - Demographic Indicators for Louisiana Parishes Pointe Coupee, St. Helena, West Baton Rouge, and West Feliciana

Demographic Indicators	Pointe Coupee	St. Helena	West Baton Rouge	West Feliciana	US
	Value (%ile)	Value (%ile)	Value (%ile)	Value (%ile)	Value (-)
People of Color	40% (59 th %ile).	56% (70 th %ile).	45% (63 rd %ile).	48% (65 th %ile).	40% (-)
Low Income	42% (71 st %ile).	44% (74 th %ile).	32% (57 th %ile).	29% (53 rd %ile).	30% (-)
Unemployment Rate	5% (62 nd %ile).	17% (94 th %ile).	8% (75 th %ile).	8% (76 th %ile).	5% (-)
Limited English Speaking	1% (60 th %ile).	1% (58 th %ile).	0% (0 th %ile).	1% (57 th %ile).	5% (-)
Population with Less Than High School Education	19% (78 th %ile).	21% (82 nd %ile).	13% (66 th %ile).	20% (80 th %ile).	12% (-)
Population below Age 5	6% (59 th %ile).	6% (55 th %ile).	7% (66 th %ile).	4% (41 st %ile).	6% (-)
Population over Age 64	21% (70 th %ile).	19% (66 th %ile).	14% (43 rd %ile).	15% (50 th %ile).	16% (-)
Low Life Expectancy	21% (63 rd %ile).	24% (87 th %ile).	21% (67 th %ile).	15% (11 th %ile).	20% (-)

Percentiles (%ile) are within the US, where indicated.

Communities in close proximity to and/or downwind of industrial sources may be subject to disproportionate environmental impacts of excess emissions. Short- and/or long-term exposure to air pollution has been associated with a wide range of human health effects including increased respiratory symptoms, hospitalization for heart or lung diseases, and even premature death.³⁷ Excess emissions during startups, shutdowns, and malfunctions exceed applicable emission limitations and can be considerably higher than emissions under normal steady-state operations. As to all population groups within the previously designated Baton Rouge ozone nonattainment area and its ROI, we believe that this proposed action will pave the way to future environmental benefits and reduce adverse impacts.

As discussed earlier, this rulemaking, if finalized as proposed, will lead to future actions to remove an impermissible SIP provision which currently provides affected sources emitting NO_x in excess of otherwise allowable amounts with an opportunity to exempt violations occurring during SSM events. The removal of LAC 33:III.2201.C(8) from the Louisiana SIP is necessary to preserve the enforcement structure of the CAA, to preserve the jurisdiction of courts to adjudicate questions of liability and remedies in judicial enforcement actions and to preserve the potential for enforcement by the EPA and other parties under the citizen suit provision as an effective deterrent to violations. If finalized as proposed, this action will lead to additional rulemaking actions intended to ensure that all communities and populations, including overburdened communities, receive the full human health and environmental protection provided by the CAA. We therefore propose to determine that this rulemaking action, if finalized as proposed, will not have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order

³⁷ <https://www.epa.gov/air-quality-management-process/managing-air-quality-human-health-environmental-and-economic#what> (URL dated 01/30/2023).

13563: Improving Regulation and Regulatory Review

The Proposed action is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), and 13563 (76 FR 3821, January 21, 2011), and 14094 (88 FR 21879, April 11, 2023); and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

The proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 et seq.). This action merely proposes to disapprove a SIP submission as not meeting the CAA.

D. Unfunded Mandates Reform Act (UMRA)

The proposed action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This proposed action imposes no enforceable duty on any State, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

The proposed action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The proposed action will not apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65

FR 67249, November 9, 2000).

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definitions of “covered regulatory action” in section 2–202 of the Executive Order. This proposed action is not subject to Executive Order 13045 because it merely proposes to disapprove a SIP submission from Louisiana as not meeting CAA requirements.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution and Use

The proposed action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This proposed rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms

and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the previously designated Baton Rouge ozone nonattainment area and its Region of Influence. In addition, there is no information in the record upon which this action is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples. This proposed action simply proposes to disapprove a SIP submission as not meeting CAA requirements for SIPs.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Particulate matter, Sulfur dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 7, 2023.

Earthea Nance,
Regional Administrator, Region 6.

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